

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

ROSS LYN VALIGURA

v.

WARDEN MENDOZA, ET AL.

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C.A. NO. C-05-513


**MEMORANDUM OPINION AND ORDER OF PARTIAL DISMISSAL**

On December 15, 2005, the United States Magistrate Judge filed her Memorandum and Recommendation in this cause (D.E. 15). Objections were filed (D.E. 26). Plaintiff claims in his objections that defendant R. Treon affirmatively participated in the alleged violation of plaintiff's rights by ordering three lockdowns. All of the evidence and pleadings submitted to date in this case with the exception of plaintiff's late-filed objections (but including plaintiff's own complaints (D.E. 4, 9)) indicate that Treon acted only in a secondary capacity. For instance, in his amended complaint plaintiff claims that Treon is culpable only because he "(h)ad knowledge of the constitutional violations through the internal grievance system (step 2) and chose to ignore these violations." (D.E. 9). Prior to his objections, plaintiff did not claim that Treon acted in an affirmative capacity in relation to the alleged lockdowns. All the evidence points to the fact that Treon's only involvement in this matter was when he denied plaintiff's grievance. Therefore, after having reviewed *de novo* the Magistrate Judge's memorandum and

recommendation and the pleadings on file, this Court hereby adopts as its own the findings and conclusions of the Magistrate Judge.

Accordingly, plaintiff's Eighth Amendment claims against Warden Mendoza, Warden Ford, Major Hennig, and Lieutenant Kempt are retained. Plaintiff's claims against K. Mayfield, R. Treon, M. Lee, M. Lawson, and E. Gonzales are dismissed.

ORDERED this 28 day of March, 2006.

  
HAYDEN HEAD  
CHIEF JUDGE